87 - 1493

No.

in the Supreme Court of the United States

October Term, 1987

CARLOS LAFAURIE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Court should reconcile the recurring conflict among the Courts of Appeals, by holding that the present decision improperly creates criminal liability by judicial fiat, for one who structured currency transactions?

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered on December 14, 1987, suggestions for rehearing and rehearing in banc denied January 13, 1988.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eleventh Circuit is published at 833 F.2d 1468 (11th Cir. 1987), and is appended to this petition as Appendix A. The Order denying rehearing and rehearing in banc is appended to this petition as Appendix B.

The Order of the district court, from which the appeal generated, is not published, but is appended to this petition as Appendix C, and the judgment of the district court is appended as Appendix D.

STATEMENT OF JURISDICTION

The Opinion of the Eleventh Circuit Court of Appeals is dated December 14, 1987, rehearing and rehearing in banc denied January 13, 1988. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1) and Rule 17.1(a), Rules of the Supreme Court.

STATUTORY AND OTHER PROVISIONS INVOLVED

The conspiracy statute is set forth in 18 U.S.C. 371. It reads as follows:

> If two or more persons conspire to commit any offense against the United States or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object

of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Title 31 U.S.C. 5313 provides, in part:

> (a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

The pertinent regulations issued by the Secretary of the Treasury, pursuant to 31 U.S.C. 5313, which were in effect during the time at issue here are:

> 31 C.F.R. 103.22(a)
>
> Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a

> transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary and all information called for in the forms shall be furnished.

A "transaction in currency" is defined in 31 C.F.R. 103.11:

> Transaction in Currency. A transaction involving the physical transfer of currency from one person to another. A transaction in currency does not include a transfer of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of currency.

Title 18 U.S.C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudeulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

Petitioner Carlos Lafaurie was indicted, along with two other persons, for one count of conspiracy (violating 18 U.S.C. 371) and 30 counts of violating 18 U.S.C. 1001. The charges stem from the structuring of currency transactions in amounts under $10,000 in an attempt to negate the bank's duty to file Currency Transaction Reports (CTRs). 31 U.S.C. 5313; 31 C.F.R. 103.22(a). One of Lafaurie's co-defendants is a fugitive, while the other pleaded guilty.

The facts material to this petition are found in the Opinion of the Court of Appeals at App. A-4 through App. A-6.

One of Lafaurie's co-defendants, Gilberto Yurubi set up a money laundering operation. Lafaurie would pay Yurubi's organization 3% of the gross amounts received for converting currency into cashier's checks and money orders, in amounts less than $10,000. Lafaurie did not give Yurubi specific instructions about whether CTRs should be filed or not, at which banks to buy, or when to buy. Yurubi would have testified that avoiding CTRs was "understood" and needed no discussion.

Yurubi had "runners" who went to different banks, converting cash to cashier's checks and money orders. One of the "runners" was a government informant; the other was an undercover government agent. Between September 1984 and February 1985, Yurubi's organization converted $4.5 million on behalf of Lafaurie. Yurubi usually received the cash from Lafaurie's associate, co-defendant Edgardo Gutierrez.

Without direction from Lafaurie, the undercover government agents went to banks and purchased over 700 cashier's checks and money orders, each one in an amount of less than $10,000. The vast majority of cashier's checks and money orders were sent by Lafaurie to an account in Switzerland or an account in Panama. Both accounts were controlled by Lafaurie. Most of the money orders listed "C. Lafaurie" as sender. On some days, the aggregate total of money orders purchased by government agents at the same or different branches of a bank exceeded $10,000.

All of the cashier's checks and money orders were purchased by government agents. The financial institutions were not instructed not to file CTRs. Yet no CTRs were filed by the various financial institutions at which cashier's checks and money orders were purchased.

Based upon an Offer of Proof, to which Lafaurie and the government stipulated, Lafaurie moved to dismiss the indictment, contending, among other things, that the indictment failed to allege a crime. Both the magistrate and district judge denied the motion. Appendix C.

Lafaurie then entered a conditional guilty plea to the conspiracy count, pursuant to Fed.R.Crim.P. 11(a)(2), reserving his right to appeal the district court's order. In accordance with the underlying plea agreement, the government dismissed the remaining counts. The district court adjudicated Lafaurie guilty of the conspiracy charge and sentenced him to a period of two years in prison and a $250,000 fine. Appendix D.

Lafaurie filed a timely appeal of the conspiracy conviction, alleging that the indictment failed to charge a crime against the United States because it was not then illegal to structure currency transactions in a way which negated the banks' duty to file CTRs. The indictment, containing the conspiracy charge in question, is attached as Appendix E.

The appeal was heard by the Court of Appeals for the Eleventh Circuit, in accordance with 28 U.S.C. 1291. The Opinion of the Court of Appeals, *United States v. Lafaurie,* 833 F.2d 1468 (11th Cir. 1987), affirming the district court's order, is attached as Appendix A.

REASONS FOR GRANTING PETITION

A. A Significant and Recurring Conflict of Decisions Exists Among the Courts of Appeal.

Carlos Lafaurie has been convicted of conspiracy (18 U.S.C. 371) and sentenced to imprisonment because government agents, acting undercover as "runners", deliberately structured currency transactions to trigger the requirement that CTRs be filed by banks. The government agents acted without any direction from Lafaurie. The banks did not file CTRs, but there is no contention that bank personnel were aware of, or participated in, any criminal act.

Contrary to the Eleventh Circuit's holding in the present case, the conspiracy count failed to state a crime because the alleged agreement did not have an illegal objective; it was not then illegal to structure currency transactions to avoid the reporting requirements. Other Courts of Appeal agree.

The activity of the government agents which resulted in Lafaurie's conviction was, at the same time, lawful in the 23 states which comprise the First, Seventh, Eighth and Ninth Federal Circuits. *United States v. Anzalone,* 766 F.2d 676 (1st Cir. 1985); *United States v. Gimbel,* 830 F.2d 621 (7th Cir. 1987); *United States v. Larson,* 796 F.2d 244 (8th Cir. 1986); *United States v. Varbel,* 780 F.2d 758 (9th Cir. 1986); *United States v. Dela Espriella,* 781 F.2d 1432 (9th Cir. 1986); *United States v. Reinis,* 794 F.2d 506 (9th Cir. 1986); *United States v. Murphy,* 809 F.2d 1427 (9th Cir. 1987). These cases all hold that it was not a crime for non-bank personnel to structure currency transactions to avoid the reporting requirements, and that an indictment which alleged such activity as a crime, failed to state a prosecutable offense.

The present decision, therefore, conflicts with seven other decisions rendered by four different Courts of Appeals. Such a clear-cut conflict of decisions by the various circuits satisfies this Court's criteria for granting review on certiorari. Rule 17.1(a), Rules of the Supreme Court.

United States v. Lafaurie, 833 F.2d 1468 (11th Cir. 1987), continued a fairly consistent pattern of cases which has developed in the Eleventh Circuit, beginning with *United States v. Tobon-Builes,* 706 F.2d 1092 (11th Cir. 1983). *See also: United States v. Cure,* 804 F.2d 625 (11th Cir. 1986). In these cases, the Eleventh Circuit has held that it is a crime to structure currency transactions in a way which results in a bank not filing a CTR.

The Eleventh Circuit framed the issue in the Opinion below:

> The present appeal thus focuses on whether the agreement had an illegal objective. Lafaurie argues that the indictment charges no crime against the United States because it is not illegal to structure currency transactions in a way that banks need not file CTRs.

833 F.2d at 1470. The court held Lafaurie's argument to be "without merit", 833 F.2d at 1470, and it affirmed the district court's order denying the motion to dismiss the indictment. Its holding relied upon the precedent which had previously developed in the Eleventh Circuit, based upon *Tobon-Builes* and its progeny. The Court of Appeals did acknowledge, however, that the *Tobon-Builes* family of cases, including the present case, is in conflict with the law of other circuits.

> . . . Lafaurie claims that, rather than follow this Court's decisions of *Tobon-Builes* and its progeny, we should follow decisions from the First and Ninth circuits. This court specifically rejected the analogy to these cases in *Cure*, 804 F.2d at 629. In addition, a panel of this Court cannot overrule another prior panel decision of this Court.

833 F.2d at 1472, fn. 8.*

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*Although the Opinion does recognize that its position is in conflict with decisions of the First and Ninth circuits, it inexplicably fails to recognize that it is also in conflict with decisions of the Seventh and Eighth circuits.

The government would respond, as it has repeatedly argued in the past, *i.e., Giancola v. United States*, Case No. 86-191, *Brief of United States In Opposition* at 9, filed November 20, 1986; *Heyman v. United States*, Case No. 86-5365, *Brief of United States In Opposition*, that there does indeed exist a conflict of law among the circuits, but "in light of . . . new legislation [the Money Laundering Control Act of 1986, (Oct. 27, 1986)], there is no reason to expect that the previous conflict among the circuits will persist." This optimistic expectation is fallacious for at least two reasons.

First, although the law has now been changed to make criminal the conduct alleged in the indictment, that law is not—and cannot be—retroactive. To the extent that present and future money laundering prosecutions involve allegations of structured deposits occurring before October 1986, the old law and existing conflict will continue. Indeed, since the government filed its *Brief in Opposition* in *Giancola* on November 20, 1986, the conflict has persisted in at least five new decisions. In *United States v. Murphy, supra*, decided February 10, 1987, the Ninth Circuit continued its adherence to the holding that structured deposits did not defraud the United States, and specifically rejected an attempt to charge such an offense under the conspiracy law, 18 U.S.C. 371. In *United States v. Gimbel, supra*, decided August 6, 1987, the Seventh Circuit addressed the conflict among the circuits for the first time, rejected the Eleventh Circuit's position, and held that the indictment did not state a crime. The Eleventh Circuit continued its contrary view in *Florez v. United States* (11th Cir., Sept. 16, 1987, unpublished),

cert. denied, ____ U.S. ____ (1988) and the Fourth Circuit adopted the Eleventh Circuit's position, while specifically rejecting the holdings of the First, Eighth and Ninth circuits. *United States v. Richeson*, 825 F.2d 17 (4th Cir. 1987). The most recent addition to the conflict is the present decision.

Second, as permitted by the five-year statute of limitations, 18 U.S.C. 3282, prosecutions under the old law will continue for a number of years into the future. The government has attempted prosecutions under the old law with great frequency, and there is no reason to believe that the government intends to declare a moratorium on the prosecution of structured deposits which took place from March 1983 through October 1986. Each of those cases will likely continue the present conflict among the circuits.

A significant and recurring conflict exists among the circuits. Despite previous assurances from the government that the conflict will not persist, it has continued. This Court should exercise its discretion to grant certiorari review of this case, in order to reconcile the conflict and establish uniformity of law among the circuits.

B. Structuring of Currency Transactions Was Not a Prosecutable Offense Prior to the Passage of Money Laundering Control Act of 1986.

Just last Term, the Court reaffirmed the principle that criminal statutes may not be expanded by judicial interpretation beyond the plain meaning of the law. *McNally v. United States*, ____ U.S. ____, 107 S.Ct. 2875

(1987). Overruling years of judicial expansion of the mail fraud law by the Courts of Appeal, the Court said:

> The Court has often stated that when there are two rational readings of a criminal statute, one harsher than the other, we are to choose the harsher only when Congress has spoken in clear and definite language. *United States v. Bass*, 404 U.S. 336, 347 (1971), *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221-222 (1952). *See* also *Rewis v. United States*, 401 U.S. 808,812 (1971). As the Court said in a mail fraud case years ago, "There are no constructive offenses; and before one can be punished, it must be shown that his case is plainly within the statute." *Fasulo v. United States*, 272 U.S. 620, 629 (1926).

Refusing to allow judicial legislation to replace Congressional legislation, the Court read the mail fraud law by its plain meaning, reversed the convictions of McNally and Gray, and held: "If Congress desires to go further, it must speak more clearly than it has."

At the time of Lafaurie's acts, criminal liability for structured currency transactions did not exist by statute; rather, it was a creature of judicial fiat of the Court of Appeals. To achieve a desired result, the Eleventh Circuit adopted a "sensible substance-over-form approach in dealing with schemes to circumvent financial institution reporting requirements." *United States v. Tobon-Builes*, 706 F.2d at 1098.

Whether sensible or not; whether socially desirable or not; no criminal law prohibited structuring currency transactions to negate a bank's duty to file a CTR, and no agreement among non-bank personnel gave rise to a conspiracy to commit such a crime. The decisions of four other Courts of Appeals represent the better reasoned law.

United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985), is a lodestar decision. On a number of occasions, Ted Anzalone had purchased checks from the Haymarket Cooperative Bank. Each individual check was in an amount of less than $10,000. On at least one day, the total amount of checks purchased exceeded $10,000, even though no one check exceeded that amount. The bank did not file CTRs for any of these transactions. Ted Anzalone was charged, tried and convicted of violations of 18 U.S.C. 1001 (proscribing schemes to conceal material facts from the government), 18 U.S.C. 2 (aiding and abetting), and 31 U.S.C. 5313, 5322 (imposing penalties for failing to file CTRs under 31 C.F.R. 22). The *Anzalone* Court reversed these convictions and dismissed the indictment. After a detailed analysis of the fair notice elements of the due process clause, 766 F.2d at 680-83, the Court held:

> We are required to conclude that the Reporting Act and its regulations, as they presently read imposed *no duty* on Appellant to inform the Bank of the "structured" nature of the transactions here in question. The application of criminal sanctions to Appellant for engaging in the activities heretofore

> described violates the fair warning requirements of the due process clause of the Fifth Amendment. The charges under Count V should have been dismissed.
>
> The charges under Count III, alleging violations of 18 U.S.C. 2 and 1001 must also fail because they depend upon the applicability of the Reporting Act, 5313, to appellant.

766 F.2d at 682.

Finding nothing on the face of the law to allow prosecution of structured deposits, the *Anzalone* Court also analyzed the legislative history to determine if structured transactions by a bank customer constituted an illegal evasion of any duty of the customer. It found no support for the proposition, but did find evidence that such conduct was not deemed criminal by some branches of the government. Reviewing a report to the Congress by the Comptroller General of the United States, the Court observed that the report found the regulations to be "silent on the propriety of customer's conducting multiple transactions to avoid reporting." 766 F.2d at 681.

The *Anzalone* Court addressed the "sensible substance-over-form approach" of the Eleventh Circuit and rejected it: "Between a "sensible" and a constitutional approach there should be no doubt as to which avenue we must choose. *See Tennessee Valley Authority v. Hill*, 437 U.S. at 195, 95 S.Ct. at 2302." 766 F.2d at 683. Its simple holding is:

> If the government wishes to impose a duty on customers, or "other participants in the transaction," to report "structured" transactions, let it require so in plain language. It should not attempt to impose such a duty by implication, expecting that the courts will stretch statutory construction past the breaking point to accommodate the government's interpretation.

766 F.2d at 682.

United States v. Larson, 796 F.2d 244 (8th Cir. 1986), also holds that the plain meaning of the law and regulations did not permit criminal liability to be imposed upon non-bank personnel.

> The regulation enacted by the Secretary, 31 C.F.R. 103.22(a), requires only that the financial institution file a report, and then only if the transaction exceeds $10,000.00. The regulation does not require other participants, such as Larson, to file a report, nor does it require them to inform the bank about other currency transactions they have made.

796 F.2d at 246-47. That Court held Larson's due process rights were violated when criminal sanctions were imposed against him for structuring deposits to negate the bank's duty to file a CTR, since he had no fair warning that his conduct was illegal.

United States v. Varbel, 780 F.2d 758 (9th Cir. 1986), presents a most straightforward analysis of the issue.

> It is well settled that criminal laws are to be strictly construed. [citations omitted]. [A] penal statute [must] define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. [citation omitted].
>
> It is also well settled that conduct made punishable by the government must be the subject of a valid criminal statute which existed at the time of the alleged offense. [citation omitted].

780 F.2d at 760-61. Examining the Reporting Act and regulations then in effect, the Court found it "patently clear from the language of 31 U.S.C. 5313(a)" that a CTR need not be filed when the amount of the transaction is less than $10,000. It found the equally plain language of 31 C.F.R. 103.22 to require CTRs only of financial institutions. To impose criminal liability on non-bank personnel on such authority would be at best ambiguous, an ambiguity created by the government itself. Based upon this analysis, the court reasoned:

> We conclude that the reporting Act and its regulations did not impose a duty on appellants to inform the banks involved of the nature of their currency transaction. We believe the application of criminal sanctions against appellants would violate due process.

780 F.2d at 762.

Not only have *Anzalone* and *Varbel* been applied to prosecutions alleging violations of substantive law, they have also been applied to reverse and dismiss attempts to prosecute conspiracies to defraud under 18 U.S.C. 371. *United States v. Murphy*, 809 F.2d 1427 (9th Cir. 1987); *United States v. Reinis*, 794 F.2d 506 (9th Cir. 1986); *United States v. Dela Espriella*, 781 F.2d 1432 (9th Cir. 1986).

Murphy held that the defendant could have no criminal liability if his co-conspirator had no duty to report. Like in the present case, Murphy's alleged co-conspirator was not a bank employee and had no duty under law to file a CTR. 809 F.2d at 1431.

Similarly, *Reinis* and *Dela Esprilla* hold that where each individual transaction involved less than $10,000, as in the present case, there can be no 18 U.S.C. 371 conspiracy to violate the Reporting Act.

Most recently, in *United States v. Gimbel*, 830 F.2d 621 (7th Cir. 1987), the Seventh Circuit rejected the "substance-over-form approach" of the Eleventh Circuit and it adopted the position taken by the First, Eighth and Ninth circuits.

When one considers the plight of Carlos Lafaurie, the law created by the Eleventh Circuit seems strange indeed. He hired Yurubi to convert funds into cashier's checks and money orders. He gave Yurubi no instructions about how or where to do this. Yurubi hired two runners, who, unbeknownst to him, were government agents. Yurubi gave them the currency and the government agents, *on their own and without*

instructions from anyone, structured the deposits in amounts of less than $10,000 and in such a way as try to invoke the bank's duty to file CTRs. If a crime was committed, it was deliberately committed by government agents attempting to create a prosecution.

Yet the agent's acts, even if performed by Lafaurie himself, would not have constituted a crime under the Reporting Act or any regulation promulgated thereunder. This is particularly clear when one examines the Money Laundering Control Act of 1986, 31 U.S.C. 5324, which became effective long after the events alleged in the indictment (September 1984 – February 1985). By its terms, the statute imposes criminal liability for structuring deposits for the purpose of evading the reporting requirements of 5313. The Senate Committee on the Judiciary and the House Committee on Banking, Finance and Urban Affairs, in two separate reports, made the identical statement about the effect of the new law:

> In addition, the proposed amendment would *create the offense* of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act. [emphasis added]

S. Rep. 99-433, 99th Cong., 2d Sess. 21-22 (1986); H.R. Rep. 99-746, 99th Cong., 2d Sess. 18-19 (1986). Congress believed the new law would "create the offense", hardly proper phraseology if the offense already existed under the old law. These Congressional reports seemingly endorse the holdings of the First, Seventh, Eighth and

Ninth circuits, and they seem entirely inconsistent with the "sensible substance-over-form" approach which the Eleventh Circuit took in the present case.

The Court should not permit judicial legislation to amend Congressional enactments. It should, as it did in *McNally, supra*, grant a writ of certiorari to the Court of Appeals, reverse Carlos Lafaurie's conviction and dismiss the indictment on the ground that the alleged object of the conspiracy was not a crime at the time the acts were committed.

CONCLUSION

Based upon the foregoing petition, it is respectfully requested that the Court grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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By: _____
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Petition for Writ of Certiorari and Appendix, with reference to the above-styled case, has been furnished by U.S. mail to the Office of the United States Attorney, 155 South Miami Avenue, Miami, Florida 33130 and to the Solicitor General, Department of Justice, Washington, D.C. 20530 this ____ day of March, 1988.

_____

Appendix

APPENDIX A

[1468] UNITED STATES of America,
Plaintiff-Appellee.

v.

Carlos LAFAURIE,
Defendant-Appellant.

No. 86-5785.

United States Court of Appeals,
Eleventh Circuit

Dec. 14, 1987.

Defendant was convicted in the United States District Court for the Southern District of Florida, No. 85-00079 CR-WJZ, William J. Zloch, J., of conspiracy. Defendant appealed. The Court of Appeals, Johnson, Circuit Judge, held that defendant committed conspiracy to cause banks to fail to file required currency transaction reports when issuing cashier's checks or money orders for less than $10,000.

Affirmed.

1. Conspiracy —33(7)

Defendant's agreement to launder cash through purchase of cashier's checks and money orders in amounts less than $10,000 involved illegal objective and was conspiracy to defraud United States by causing

banks to fail to file required currency transaction reports, where aggregate total of cashier's checks and money orders listing defendant as sender and purchased on same date at same or different bank branches exceeded $10,000. 18 U.S.C.A. §§ 371, 1001; 31 U.S.C.A. § 5313.

2. United States —34

Structuring currency transactions so that banks need not file currency transaction reports for transactions exceeding $10,000 is not illegal. 31 U.S.C.A. § 5313.

3. United States —34

Bank must file currency transaction report if currency exchanges totaling more [1469] than $10,000 are made by single person or partners or associates in single day either in different branch of same bank or at same branch of bank. 31 U.S.C.A. § 5313.

4. Conspiracy —33(7)

Conspiracy to cause bank to fail to file required currency transaction reports is conspiracy to defraud United States. 18 U.S.C.A. §§ 371, 1001; 31 U.S.C.A. § 5313.

5. Criminal Law —1158(1)

District court's finding that government agents acted at direction of money-laundering operation was not clearly erroneous in prosecution of defendant for conspiracy to cause banks to fail to file required

currency transaction reports, where coconspirator's instructions to government agents not to go to same bank twice in a week was capable of an interpretation as warning to avoid arousing suspicion, and where instruction to government agents did not take place until three months into conspiracy, after 588 currency transactions had been consummated. 18 U.S.C.A. §§ 371, 1001; 31 U.S.C.A. § 5313.

Bailey, Gerstein, Rashkind & Dresnick, Paul M. Rashkind, F. Lee Bailey, Miami, Fla., for defendant-appellant.

Leon B. Kellner, U.S. Atty., Bruce L. Udolf, Mayra Reyler Lichter, Linda Collins Hertz, Asst. U.S. Attys., Miami, Fla., for plaintiff-appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before JOHNSON and
EDMONDSON, Circuit Judges, and
HOFFMAN,* Senior District Judge.
JOHNSON, Circuit Judge.

Carlos Lafaurie moved to dismiss his indictment charging conspiracy for failure to allege a criminal offense. The United States District Court for the Southern District of Florida denied his motion. We affirm.

*Honorable Walter E. Hoffman, Senior U.S. District Judge for the Eastern District of Virginia, sitting by designation.

I.

Lafaurie, Edgardo Gutierrez, and Gilberto Yurubi[1] were indicted on one count of conspiracy (violating 18 U.S.C.A. § 371) and 30 counts of violating 18 U.S.C.A. § 1001. The charges stem from an attempt not to trigger the requirement that financial institutions file Currency Transaction Reports (CTRs) for currency transactions exceeding $10,000. 31 U.S.C.A. § 5313; 31 C.F.R. § 103.22(a).

An Offer of Proof (stipulated by the parties before the district court) indicated that Yurubi had set up a money laundering operation. Lafaurie would pay Yurubi's organization a commission of 3% of the gross amounts received in return for converting the currency into cashier's checks and money orders, both in amounts under $10,000. Lafaurie did not give Yurubi specific instructions concerning the filing or nonfiling of CTRs, at which banks to buy, or when to buy. Yurubi would testify that avoiding CTRs was "understood" and needed no discussion.[2]

---

[1]Gutierrez forfeited bond and is currently a fugitive. Yurubi pled guilty to the first three counts of the indictment. Yurubi would appear as a government witness against Lafaurie.

[2]Yurubi had set up his own money laundering operation after the Jacques Behar money laundering operation terminated its relationship with Yurubi. *See United States v. Cure*, 804 F.2d 625 (11th Cir. 1986) (per curiam) (discussing Behar organization). Although not charged in the indictment at issue here, Yurubi knew that the Behar organization had laundered money for Lafaurie on at least one occasion. In addition, the government informant in the present case had worked with the Behar organization.

Yurubi's "runners" went to different banks, converting the cash to cashier's checks and money orders. One "runner" was a government informant; the other was a government agent introduced into the Yurubi organization by the government informant. In the course of four months, [1470] Yurubi's organization laundered $4.5 million for Lafaurie.[3]

Yurubi told the government informant that his clients preferred money orders, because money orders, unlike cashier's checks, could be purchased without naming any payee, thus leaving the client free to direct them in any way he wished. To launder the $4.5 million, the runners purchased over 700 cashier's checks and money orders (all but approximately 85 were money orders) with each cashier's check or money order in an amount of less than $10,000. The cashier's checks and money orders could be deposited in any aggregate amount without a need for CTRs because CTRs are required only for cash transactions.

The vast majority of cashier's checks and money orders were sent by Lafaurie either to an account at the Credit Swisse Bank in Switzerland, or to an account at the Banco Occidente in Panama. Both accounts were controlled by Lafaurie. In addition, the vast majority of the money orders listed "C. Lafaurie" as sender. Many times, the aggregate total of money orders listing

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[3]Yurubi usually received the cash to be laundered from Gutierrez, Lafaurie's associate.

"C. Lafaurie" as sender and purchased on the same date at the same or different branches of a bank exceeded $10,000.[4]

CTRs were not properly filed by the various financial institutions at which the cashier's checks and money orders were purchased. Although the cashier's checks and money orders were all purchased by undercover government agents, none of the financial institutions was instructed by the government not to file CTRs.

Lafaurie moved to dismiss the indictment, but the magistrate entered an order recommending denial of the motions. Lafaurie then requested *de novo* consideration of his motions in the district court. The district court adopted the magistrate's recommendations.

Lafaurie then entered a conditional guilty plea pursuant to Fed.R.Crim.P.11(a)(2), reserving his right to appeal the district court's order. The underlying plea agreement required the government to dismiss the last 30 substantive counts. The district court adjudicated Lafaurie guilty on the conspiracy charge, sentencing him to two years in prison and fining him $250,000. Lafaurie then filed this timely appeal against the conspiracy charge.

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[4]Although by no means exhaustive, examples include: (1) $19,000 from Amerifirst on 9/21/84; (2) $58,000 from Amerifirst on 10/02/84; (3) $16,000 from Southeast on 10/02/84; (4) $33,000 from Florida National on 10/02/84; (5) $16,000 from Amerifirst on 10/03/84; (6) $37,000 from Amerifirst on 10/04/84; and (7) $24,000 from Florida National on 10/04/84.

II.

In order to establish a conspiracy, the government must show (1) an agreement to achieve an illegal objective (i.e., either to commit an offense against the United States, or to defraud the United States or one of its agencies); (2) the defendant knowingly and voluntarily participated in the conspiracy, and (3) the commission of an overt act in furtherance of the conspiracy by one of the co-conspirators. *United States v. Sanchez,* 790 F.2d 1561, 1563 (11th Cir. 1986).

[1] The stipulated Offer of Proof shows that the latter two prongs are easily met. First, Lafaurie knowingly and voluntarily entered into an agreement with Yurubi for Yurubi to launder Lafaurie's cash. Second, numerous overt acts were undertaken by Lafaurie and Yurubi. The present appeal thus focuses on whether the agreement had an illegal objective. Lafaurie argues that the indictment charges no crime against the United States because it is not illegal to structure currency transactions in a way that banks need not file CTRs.

[2] Lafaurie is certainly correct that it is not illegal to so structure currency transactions. *United States v. Denemark,* 779 F.2d 1559 (11th Cir. 1986).[5] Lafaurie's argument, [1471] however, is without merit. As this Court noted in *United States v. Cure,* 804 F.2d 625, 629 (11th Cir. 1986) (per curiam), "[l]iability . . . depends

[5]In *Denemark* the Court held that a bank was not required to file a CTR where the defendant, using several different names, went to 14 different banks and purchased cashier's checks for $9,900 each.

on whether the bank was required to file a CTR for . . . a bank customer is not liable merely for structuring his cash transactions so as to create transactions in which the filing of a CTR is not required."

[3] A bank must file a CTR if currency exchanges totalling more than $10,000 are made by a single person or his partners or associates in a single day either in different branches of the same bank, *id.* at 629–30; *United States v. Giancola,* 783 F.2d 1549; 1552 (11th Cir.), *cert. denied,* ____ U.S. ____, 107 S.Ct. 669, 93 L.Ed.2d 721 (1986), or at the same branch of a bank. *United States v. Tobon-Builes,* 706 F.2d 1092 (11th Cir. 1983); *United States v. Thompson,* 603 F.2d 1200 (5th Cir. 1979).

[4] The record clearly establishes that some purchases in the present case triggered a bank's duty to file a CTR. *See supra* note 4 and accompanying text. A conspiracy to cause a bank to fail to file CTRs is a conspiracy to defraud the United States in violation of Section 371. *See, e.g., Giancola, supra,* 783 F.2d 1549. The indictment thus is sufficient to charge a violation of Section 371.

Although admitting that some transactions triggered the CTR requirement, Lafaurie argues that *he* did not seek an illegal objective. In its order denying the defendant's motion to dismiss the indictment, the district court wrote that

> [a]s is also stated in the Offer [of Proof], between September, 1984 and the end of January, 1985, the money laundering organization laundered approximately $4,500,000.00 for the

> Defendant. To that end, over 700 cashier's checks and money orders were purchased at approximately six different financial institutions by government agents *acting at the direction of* the money laundering operation.

United States v. Lafaurie, No. 85-00079, slip op. at 3 (S.D. Fla. May 23, 1986) (emphasis added). Lafaurie argues that the district court's factual finding that the agents "acted at the direction of" the money laundering operation was clearly erroneous.

Lafaurie claims that he and Yurubi intended the laundering transactions to be structured so that no bank was required to file a CTR. Lafaurie argues that the government informant and the government agent (the "runners") did not follow Yurubi's instructions and laundered currency in such a way that a bank was required to file a CTR. Lafaurie thus contends that but for the government informant's and the government agent's disregarding Yurubi's instructions, *Denemark* would protect the money laundering activities.[6] Lafaurie focuses on Yurubi telling the government agent not to

[6]We do not view Lafaurie as arguing that the mere presence of the government informant and the government agent would destroy the conspiracy. This Court in *Cure* approvingly cited cases standing for the proposition that the presence of a government agent does not destroy a conspiracy in which at least two other private individuals have agreed to engage in an unlawful adventure. 804 F.2d at 629 n.2. In the present case, Lafaurie, Gutierrez, and Yurubi were involved in the alleged conspiracy.

"go to the same bank twice in a week." The government argues the conversation is more of a warning to avoid arousing suspicion than an instruction.[7]

[1472] [5] We hold that the district court finding that the "government agents act[ed] at the direction of the money laundering operation" is not clearly erroneous for at least two independent reasons. First the conversation set forth in note 7 upon which Lafaurie

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[7]The conversation states in relevant part (blanks and question mark appear as in the transcript: "Mike" is the "runner" and a government agent):

> MIKE: Naturally. I believe that in any case it's always better to deversify [sic] to use the same banks as little as possible even though one has to travel more.
>
> YURUBI: No. You have to do it. Herb doesn't go to the same bank in one week. If you go to the same bank twice in a week and they'll report you. You must have gone to that bank already this week.
>
> MIKE: It's possible. I try to do the same as Herb but it's possible. I had to go there Monday or Tuesday.
>
> YURUBI: I mean to the same teller.
>
> MIKE: Well you can't choose your teller. You get in line and
>
> YURUBI: ?
>
> MIKE: Oh yeah? but I mean, once you're in line you cannot choose which teller you'll get.
>
> YURUBI: No. But you must be careful that there aren't any more of those papers. If they get one they won't say anything but if ten of them come in. . . .
>
> MIKE: Un hum. That's when there'll be an investigation. Well from now on I'll be careful not to visit any banks twice in one week.

bases his argument is capable of interpretation as a warning to avoid arousing suspicion, and thus the district court's finding was not clearly erroneous. Indeed, the "runners" consistently purchased cashier's checks and money orders from the same banks before and after this conversation and did so without correction from Yurubi and Lafaurie. Second, even if the conversation could be construed as an instruction, the conversation occurred in December 1984. This conversation did not take place until three months into the conspiracy, after 588 of the currency transactions had already been consummated. Lafaurie had sent money orders clearly requiring a bank to file a CTR, *see supra* note 4 and accompanying text, to his accounts in Switzerland and Panama, and never informed Yurubi to structure the laundering transactions in any other manner.[8]

---

[8]Lafaurie makes three additional unavailing arguments. First, he argues that, because officers in some banks were made aware that the transactions were part of an undercover operation, he cannot be held responsible for their subsequent failure to file CTRs. Even assuming that some banks eventually learned of the government investigation, no instructions were given to any of the banks at any time concerning the filing of CTRs and the vast majority of checks and money orders were purchased before any bank officers knew that a government investigation was being conducted.

Second, Lafaurie claims that, rather than follow this Court's decision of *Tobon-Builes* and its progeny, we should follow decisions from the First and Ninth circuits. This Court specifically rejected the analogy to these cases in *Cure*, 804 F.2d at 629. In addition, a panel of this Court cannot overrule another prior panel decision of this Court.

Third, Lafaurie argues that holding him criminally liable violates his constitutional right to fair warning. This Court rejected this argument in *Cure*. *Id.* at 630.

Consequently, the district court properly denied Lafaurie's motion to dismiss his indictment. The indictment and Offer of Proof demonstrate that Lafaurie participated in a conspiracy to prevent banks from fulfilling their requirement of filing CTRs. Accordingly, we AFFIRM the district court.[9]

[9]Because of our conclusion, we express no view as to whether Yurubi, as an individual, could be described as a "financial instutition," and thus subject to the CTR requirement.

APPENDIX B

[FILED JAN 13]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 86-5785

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

CARLOS LAFAURIE,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING IN BANC

(Opinion _____, 11 Cir., 198__, ____F.2d____).
( )

Before JOHNSON and EDMONDSON, Circuit Judges and *HOFFMAN, District Judge.

PER CURIAM:

(✓) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause in banc, and a majority of the judges in active service not having voted in favor of it, Rehearing In Banc is DENIED.

ENTERED FOR THE COURT:

/s/ [illegible] Johnson Jr.
United States Circuit Judge

ORD-42

*United States District Court Judge for the Eastern District of Virginia, sitting by designation.

APPENDIX C

[FILED MAY 23, 1986]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 85-0079-CR-ZLOCH

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
GILBERTO YURUBI,
Defendants.

ORDER

THIS MATTER is before the Court upon the Order on Various Motions of United States Magistrate Samuel J. Smargon dated September 4, 1985 (DE 92) and the Objections thereto filed by the Defendant, CARLOS LAFAURIE, dated September 19, 1985 (DE 98). Thereafter, this Court conducted a *de novo* review of the Defendant's Motions to Dismiss the counts of the Indictment for the various legal reasons cited therein, and the Government's responses thereto. The Court heard and considered oral argument of able counsel of record on February 21, 1986, and the Court carefully reviewed and considered the Offer of Proof (DE 124) stipulated to by the parties.

Regarding the Magistrate's denial of Defendant's Motion to Dismiss Counts 2-31 of the Indictment, Counts 2 through 31 each charge that on various dates the Defendant and others concealed and caused the concealment, by means of scheme, trick and device, material facts in a matter within the jurisdiction of the Internal Revenue Service (I.R.S.) which facts were required to be reported to the I.R.S. pursuant to 31 U.S.C. Section 5313 and 31 C.F.R. Section 103. The scheme, trick and device alleged in each count had as its object the concealment of the existence, source, origin, ownership and transfer of large amounts of United States currency, in each case well in excess of $10,000.00. The counts allege that the means by which this object was accomplished was by structuring each large amount of cash over $10,000.00 into a series of smaller purchases of cashier's checks and money orders, each under $10,000.00. In that way, the counts allege, the Defendant was able to transfer the large amounts of cash into accounts in Panama or Switzerland without notice to the Internal Revenue Service in the form of Currency Transaction Reports (CTR's.)

The Eleventh Circuit Court of Appeals recently addressed the structuring and CTR reporting issues:

> The reporting requirements in title 31 of the United States Code apply only to financial institutions. There is no obligation on the part of a bank customer to ensure that his or her bank files a CTR. There is also no obligation on the part of a bank customer to structure his or her financial dealings so that they become

> subject to the reporting requirements. *See e.g., United States v. Denemark*, 779 F.2d 1559 (11th Cir. 1986). A bank customer *does*, however, have an obligation to avoid structuring his or her dealings so that the bank is misled into thinking that no CTR is necessary when, in fact, one is. Under 18 U.S.C. Section 2, one who willfully causes another to commit a crime may be charged as a principal. One who purposely structures transactions so that a bank fails to realize that a CTR must be filed has willfully caused the bank to commit the crime of failing to file a CTR.

United States of America v. Wilberto Lopera, et al., No. 85-5961, at 2-3 (11th Cir. April 29, 1986).

As is stated in the stipulated Offer of Proof filed by the parties ("Offer"), the Defendant paid other persons involved in the money laundering scheme described in the Offer a 3% commission on gross amount received from the Defendant for conversion into cashier's checks and/or money orders in amounts less than $10,000.00. While the Defendant did not give these other persons specific instructions concerning the filing or non-filing of CTR's, or when or at which financial institutions to conduct the transactions, Gilberto Yurubi, a principal in the money laundering operation who has pled guilty to charges in this case and who has agreed to testify for the Government, would testify that the avoidance of CTR's was "understood" and needed no discussion. Offer at 3.

As is also stated in the Offer, between September, 1984 and the end of January, 1985, the money laundering organization laundered approximately $4,500,000.00 for the Defendant. To that end, over 700 cashier's checks and money orders were purchased at approximately six different financial institutions by government agents acting at the direction of the money laundering operation. Offer at 4, 7, Appendix 2.

The Defendant asserts that there is no prohibition against structuring cash transactions involving more than $10,000.00 into a series of smaller transactions of less than $10,000.00. While it may be true that structuring *per se* is not prohibited, *U.S. v. Denemark,* the structuring of a cash transaction with the intent to cause an otherwise required CTR not to be filed is clearly prohibited by law. *United States v. Tobon-Builes,* 706 F.2d 1092 (11th Cir. 1983); *United States v. Thompson,* 603 F.2d 1200 (5th Cir. 1979; *U.S. v. Lopera.* A bank is required to file a CTR on structured transactions which total over $10,000.00. *U.S. v. Thompson.* That CTR's were required to have been filed by the banks as alleged in each count, and that the prevention of those filings was the object of the scheme and the intent of the Defendant, is clear from the Offer. The transactions in question in each count did not become exempt from the filing requirements simply because they were conducted by government undercover agents and a confidential informant. Section 103.22(b)(2)(iii) of Title 31, Code of Federal Regulations, exempts official, routine, day-to-day government transactions of government money, not transactions conducted by government undercover agents and confidential informants. *United States v. Richter,* 610

F.Supp. 480 (N.D. Ill. 1985). Moreover, there is no indication that this exemption was the cause of the failures to file.

While it may be true that the Defendant had no individual or personal duty to file CTR's, he may still be held criminally liable under the operation of 18 U.S.C. Section 2(b) if he knowingly and willfully caused either the failure to file a required CTR in violation of 31 U.S.C. Sections 5313 and 5322, or caused the concealment of material facts within the jurisdiction of the I.R.S. in violation of 18 U.S.C. Section 1001. *United States v. Puerto,* 730 F.2d 627, 633; *United States v. Sans,* 731 F.2d 1521, 1531 (11th Cir. 1984), *U.S. v. Lopera.* Moreover, the constitutional requirements of fair notice may be satisfied by judicial case law which interprets and clarifies statutes or regulations. *Rose v. Locke,* 423 U.S. 48 (1975); *United States v. Bohonus,* 628 F.2d 1167 (9th Cir. 1980). In this regard, the precise conduct engaged in by the Defendant has been repeatedly condemned in this Circuit and in other courts. *U.S. v. Lopera; U.S. v. Sans; U.S. v. Puerto; U.S. v. Tobon-Builes; U.S. v. Richter; United States v. Sanchez-Fazquez,* 585 F.Supp. 990 (N.D. Ga. 1984); *United States v. Konefal,* 566 F.Supp. 698 (N.D. NY 1983).

Defendant relies on *United States v. Anzalone,* 776 F.2d 676 (1st Cir. 1985) and *United States v. Varbel,* 780 F.2d 758 (9th Cir. 1986) for the proposition that the applicable statutes and regulations are unconstitutionally vague and ambiguous as applied to him. These cases are contrary to the Eleventh Circuit holdings in *Lopera, Tobon-Builes, Puerto* and *Sans,* and

the Fifth Circuit holding in *Thompson. Anzalone* and *Varbel* are distinguishable because they held that an individual has no duty to file a CTR or to inform a bank of structured transactions, therefore the criminal application of the reporting scheme as it related to the individual defendants was unconstitutional. Here, the government does not assert that the Defendant himself had any obligation to file any forms or advise any bank. Rather, it asserts that Defendant had a duty not to cause others who did have an obligation to file the forms or reports to fail in that duty. This is the same theory of criminal liability applied in *Lopera* and *Tobon-Builes,* a theory which *Anzalone* and *Varbel,* did not address.

Defendant also relies on *United States v. Cogswell,* ____ F.Supp. ____, Case No. CR-85-646, WHO, (N.D. Cal. November ____, 1985). While perhaps closer on point to this case than *Anzalone* and *Varbel,* the District Court in *Cogswell* adopted the *Anzalone* reasoning while acknowledging that "The reasoning of the Anzalone court, with which this Court agrees, cannot be reconciled with the view of the Fifth, Tenth and Eleventh Circuits." *Cogswell,* at 7.

The activity alleged in Counts 2-31 of the Indictment and described in the Offer falls within the principles of the Eleventh Circuit cases of *Lopera, Tobon-Builes, Puerto* and *Sans,* which are binding precedent on this Court, as well as the principles of the Fifth Circuit case of *Thompson.* Cases decided by the Fifth Circuit Court of Appeals before the close of business on September 31, 1981 are binding on this Court as precedent. *Bonner v. City of Prichard,* 661 F.2d 1206 (11th Cir. 1981).

Regarding the Magistrate's denial of Defendant's Motion to Dismiss the Conspiracy Count (Count 1) of the Indictment, Count 1 charges a conspiracy to defraud the United States by impairing, obstructing and defeating its lawful governmental function of collecting data and reports of large currency transactions over $10,000.00; and to conceal and cover up, by scheme and device, material facts within the jurisdiction of the Internal Revenue Service. Essentially, the conspiracy charges that the Defendant conspired to transact over four million dollars cash over a period of six months without the filing of required CTR's with the I.R.S. That the activity alleged constitutes crimes which may validly be charged as the illegal objectives of an unlawful conspiracy has been made clear by the Eleventh Circuit in *Puerto,* and *Sans.* Further, it is clear from the stipulated Offer of Proof and from the reasonable inferences to be drawn therefrom that these were the unlawful objectives of the conspiracy alleged in Count 1.

Regarding the Magistrate's denial of Defendant's Motion to Dismiss Counts 2-31 for complete failure to present any evidence of a criminal offense to the Grand Jury and for disclosure of Grand Jury instructions, the Defendant seeks to dismiss Counts 2 through 31 on the ground that no evidence was presented to the Grand Jury. The Defendant argues that (1) bank has no duty to file CTR's on multiple cash transactions over $10,000.00; (2) customer has no duty to file CTR's or to aggregate his own multiple transactions into one transaction over $10,000; (3) since no such legal duties exist, no evidence of such duties could possibly have been presented to the Grand Jury; and (4) therefore, the

counts should be dismissed because no evidence was presented to the Grand Jury.

The government may, of course, instruct a Grand Jury concerning the law. The Defendant seeks disclosure of any instructions given in this case, presumably on the theory that they were incorrectly given and that the Indictment is, therefore, invalid. The instructions, however, constitute matters occurring before the Grand Jury and can be disclosed to the Defendant only upon a showing of particularized need. See Rule 6, Fed. R. Crim. P., *United States v. Sells Engineering, Inc.*, 103 S.Ct. 3133 (1983). The Defendant does not make any showing of such need. Even if the instructions to the Grand Jury were improper and erroneous, the Indictment is not invalid. See *United States v. Linetsky*, 533 F.2d 192 (5th Cir. 1976); *United States v. Slepicoff*, 524 F.2d 1244 (5th Cir. 1976); and *United States v. Busic*, 472 F.Supp. 880 (E.D.N.Y. 1977). Based on the findings of fact and conclusions of law set forth above, the Court having reviewed the entire court file and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Order on Various Motions (DE 92) of the United States Magistrate Samuel J. Smargon, dated September 4, 1985 denying the Defendant's Motion to Dismiss Counts 2-31 of the Indictment, denying the Defendant's Motion to Dismiss the Conspiracy Count (Count 1) of the Indictment and denying the Defendant's Motion to Dismiss Counts 2-31 for complete failure to present any evidence of a criminal offense to the Grand Jury and for disclosure of Grand Jury instructions be and the

same is hereby affirmed, ratified and adopted by the Court and the Defendant's Motions to Dismiss aforementioned be and the same are hereby DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 23rd day of May, 1986.

/s/ William J. Zloch
WILLIAM J. ZLOCH
United States District Judge

Copies furnished:
Counsel of Record
U.S. Magistrate, Samuel J. Smargon

APPENDIX D

[FILED SEP 9 1986]

United States District Court for

United States of America

vs.

CARLOS LA FAURIE

Defendant

DOCKET NO 85-79-CR-ZLOCH

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government KEN NOTO the defendant appeared in person on this date SEPTEMBER 5, 1986

COUNSEL

WITH COUNSEL Ronald C. Dresnick, F. Lee Bailey, Richard Gerstein 4770 Biscayne Blvd Miami, FL 33137

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

FINDING & JUDGMENT

There being a finding of GUILTY.

Defendant has been convicted as charged of the offense(s) of conspiracy to defraud IRS in violation of 18:371

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

TWO (2) YEARS as to Count One and fined the sum of $250,000.

Further, the defendant is ordered to stand committed until the fine is paid.

IT IS FURTHER ORDERED that the defendant pay an assessment in the amount of $50.00 as to Count One.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the

conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends Execution of sentence deferred until 24 hours after Mandate is issued from Eleventh Circuit Court of Appeals to facility designated or U.S. Marshal in Miami, Florida.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge /s/ WILLIAM J. ZLOCH
Date 9/9/86

APPENDIX E

[FILED FEB 8 1985]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 85-0079
18 USC §2
18 USC §1001
18 USC §371

CR-EATON

UNITED STATES OF AMERICA,

v.

CARLOS LAFAURIE, EDGARDO GUTIERREZ,
and GILBERTO YURUBI

INDICTMENT

The Grand Jury charges that:

COUNT I

(I) From on or about September, 1984, the exact date being unknown, until on or about February 1, 1985, in the Southern District of Florida and elsewhere, the defendants,

CARLOS LAFAURIE
EDGARDO GUITERREZ
and
GILBERTO YURUBI,

combined, conspired, confederated and agreed with each other and others unknown to the Grand Jury;

(i) To defraud the Internal Revenue Service, an agency of the United States, by impairing, obstructing and defeating its authorized function of collecting data and reports of currency transactions exceeding $10,000 for the purpose of detecting and investigating violations of the criminal law;

(ii) To knowingly and willfully conceal and cover up and to cause the concealing and covering up, by scheme and device, material facts within the jurisdiction of the Internal Revenue Service, an agency of the United States, such scheme having been devised with the intention to conceal the origin, existence and transfer of currency in amounts exceeding $10,000, as fully set out in Counts two through thirty-one of this Indictment, which are incorporated by reference herein, in violation of Title 18, United States Code, Section 1001.

(iii) To knowingly and willfully use and cause to be used facilities in interstate and foreign commerce, that is, telegraph, wire, common carrier, and air courier facilities, with the intent to promote, manage, establish and carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity; the unlawful activity being a business enterprise

involving narcotics and controlled substances (as defined in section 102(6) of the Controlled Substances Act); and thereafter, to perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the aforesaid unlawful activity; in violation of Title 18, United States Code, Section 1952.

(II) The manner and means by which the objectives of the unlawful conspiracy were accomplished consisted, among others of the following:

(a) At all times material herein, defendant GILBERTO YURUBI was a domestic financial institution as defined in 31 Code of Federal Regulations, Section 103.11.

(b) From an unknown date and continuing until February 1, 1985, the defendants, CARLOS LAFAURIE and EDGARDO GUITERREZ, accumulated quantities of United States currency substantially in excess of $10,000.

(c) The sums of currency were derived from the importation, possession and distribution of controlled substances, as defined in Section 102(6) of the controlled substances act.

(d) GILBERTO YURUBI hired persons to receive currency in amounts in excess of $10,000 and to take those funds to banks and buy negotiable instruments, each instrument being in an amount less than $10,000.

(e) During the period September, 1984, to February, 1985, CARLOS LAFAURIE, GILBERTO YURUBI and EDGARDO GUITERREZ converted and caused to be converted approximately $5 million cash into numerous negotiable instruments.

(f) During the period September, 1984, to February, 1985, CARLOS LAFAURIE, GILBERTO YURUBI and EDGARDO GUITERREZ failed to file and caused the failure to file Currency Transaction Reports with the Internal Revenue Service in connection with receipt of currency and the exchange of currency in amounts exceeding $10,000, as required by Title 31, United States Code, Section 5313 and 31 Code of Federal Regulations, Sections 103.21, 103.22 and 103.25.

(g) After converting the above sums of cash into cashiers checks, the defendants, CARLOS LAFAURIE, GILBERTO YURUBI and EDGARDO GUITERREZ used and caused to be used telegraph, wire, common carrier and air courier facilities to transmit such sums in interstate and foreign commerce.

OVERT ACTS

(III) In furtherance of the conspiracy and to affect the objects thereof, the following overt acts, among others, were performed in the Southern District of Florida:

1) On or about September 15, 1984, GILBERTO YURUBI delivered $400,000 in United States currency to Herbert M. Friedberg.

2) On or about September 22, 1984, GILBERTO YURUBI delivered $25,000 in United States currency to Herbert M. Friedberg.

3) On or about September 25, 1984, GILBERTO YURUBI had a conversation with CARLOS LAFAURIE, who was in Switzerland.

4) On or about September 25, 1984, GILBERTO YURUBI delivered $16,000 in United States currency to Herbert M. Friedberg.

5) On or about 8:30 a.m., September 26, 1984, GILBERTO YURUBI delivered $16,000 in United States currency to Herbert M. Friedberg.

6) On or about 11:10 a.m., September 26, 1984, GILBERTO YURUBI delivered $16,000 in United States currency to Herbert M. Friedberg.

7) On or about September 28, 1984, GILBERTO YURUBI delivered $92,000 in United States currency to Herbert M. Friedberg.

8) On or about October 2, 1984, GILBERTO YURUBI delivered $16,000 in United States currency to Herbert M. Friedberg.

9) On or about 10:30 p.m., October 2, 1984, GILBERTO YURUBI delivered $50,000 in United States currency to Herbert M. Friedberg.

10) On or about October 5, 1984, GILBERTO YURUBI delivered $120,000 in United States currency to Herbert M. Friedberg.

11) On or about 8:10 a.m., October 9, 1984, GILBERTO YURUBI delivered $64,000 in United States currency to Herbert M. Friedberg.

12) On or about 7:40 p.m., October 9, 1984, GILBERTO YURUBI received a quantity of negotiable instruments from Herbert M. Friedberg.

13) On or about October 15, 1984, GILBERTO YURUBI delivered $70,000 in United States currency to Herbert M. Friedberg.

14) On or about 9:00 p.m., October 15, 1984, GILBERTO YURUBI delivered $250,000 in United States currency to Herbert M. Friedberg.

15) On or about October 16, 1984, GILBERTO YURUBI received a quanity of negotiable instruments from Herbert M. Friedberg.

16) On or about October 16, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

17) On or about 8:20 a.m., October 17, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

18) On or about 2:50 p.m., October 17, 1984, GILBERTO YURUBI received a quantity of negotiable instruments from Herbert M. Friedberg.

19) On or about 6:50 p.m., October 17, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

20) On or about October 18, 1984, GILBERTO YURUBI delivered $290,000 in United States currency to Herbert M. Friedberg.

21) On or about 7:45 p.m., October 18, 1984, GILBERTO YURUBI received a quantity of negotiable instruments from a Special Agent operating in an undercover capacity.

22) On or about 7:00 p.m., October 22, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

23) On or about November 1, 1984, EDGARDO GUTIERREZ met with GILBERTO YURUBI.

24) On or about 8:19 a.m., November 2, 1984, GILBERTO YURUBI received a quantity of negotiable instruments.

25) On or about 9:40 a.m., November 2, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

26) On or about 11:00 a.m., November 2, 1984, EDGARDO GUTIERREZ went to the residence of CARLOS LAFAURIE.

27) On or about 8:25 a.m., November 14, 1984, GILBERTO YURUBI received a quantity of negotiable instruments.

28) On or about 8:42 a.m., November 14, 1984, GILBERTO YURUBI took a quantity of negotiable instruments to the residence of EDGARDO GUTIERREZ.

29) On or about 5:00 p.m., November 14, 1984, GILBERTO YURUBI received a quantity of negotiable instruments.

30) On or about 6:45 p.m., November 14, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

31) On or about a time prior to 9:45 a.m., November 15, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

32) On or about 9:55 a.m., November 15, 1984, GILBERTO YURUBI delivered $148,900 to a Special Agent acting in an undercover capacity.

33) On or about November 15, 1984, GILBERTO YURUBI had a telephone conversation with EDGARDO GUTIERREZ.

34) On or about 7:12 p.m., November 15, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

35) On or about 6:20 p.m., November 16, 1984, GILBERTO YURUBI received $100,000 in United States currency at the residence of EDGARDO GUTIERREZ.

36) On or about 6:45 p.m., November 16, 1984, GILBERTO YURUBI delivered $100,000 in United States currency to a Special Agent acting in an undercover capacity.

37) On or about November 19, 1984, GILBERTO YURUBI delivered $250,000 in United States currency to a Special Agent acting in an undercover capacity.

38) On or about November 21, 1984, GILBERTO YURUBI delivered $150,000 in United States currency to Herbert M. Friedberg.

39) On or about November 23, 1984, GILBERTO YURUBI delivered $300,000 in United States currency to Herbert M. Friedberg.

40) On or about November 26, 1984, EDGARDO GUTIERREZ and CARLOS LAFAURIE had a meeting.

41) On or about 4:30 p.m., November 27, 1984, GILBERTO YURUBI received a quantity of negotiable instruments.

42) On or about 4:50 p.m., November 27, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

43) On or about November 29, 1984, GILBERTO YURUBI delivered $95,250 in United States currency to Herbert M. Friedberg.

44) On or about November 29, 1984, GILBERTO YURUBI delivered $163,600 in United States currency to Herbert M. Friedberg.

45) On or about November 29, 1984, GILBERTO YURUBI received a quantity of negotiable instruments.

46) On or about December 1, 1984, GILBERTO YURUBI delivered $223,100 in United States currency to a Special Agent acting in an undercover capacity.

47) On or about December 5, 1984, GILBERTO YURUBI delivered $194,000 in United States currency to Herbert M. Friedberg.

48) On or about December 7, 1984, GILBERTO YURUBI delivered $480,000 in United Sta' es currency to a Special Agent acting in an undercover capacity.

49) On or about December 11, 1984, GILBERTO YURUBI received a quantity of negotiable instruments.

50) On or about December 11, 1984, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

51) On or about December 12, 1984, CARLOS LAFAURIE entered a safe deposit box.

52) On or about December 12, 1984, GILBERTO YURUBI and CARLOS LAFAURIE met and CARLOS LAFAURIE gave GILBERTO YURUBI $290,000 in United States currency.

53) On or about December 12, 1984, GILBERTO YURUBI delivered $290,000 in United States currency to Herbert M. Friedberg.

54) On or about December 15, 1984, GILBERTO YURUBI met with CARLOS LAFAURIE

and GILBERTO YURUBI received $240,000 in United States currency from CARLOS LAFAURIE.

55) On or about December 15, 1984, GILBERTO YURUBI delivered $240,000 in United States currency to Herbert M. Friedberg.

56) On or about 8:50 a.m., December 18, 1984, GILBERTO YURUBI received a quantity of negotiable instruments.

57) On or about 9:15 a.m., December 18, 1984, GILBERTO YURUBI and EDGARDO GUTIERREZ met.

58) On or about January 2, 1985, GILBERTO YURUBI delivered $200,000 in United States currency to Herbert M. Friedberg.

59) On or about January 2, 1985, GILBERTO YURUBI received a quantity of negotiable instruments.

60) On or about 4:55 p.m., January 3, 1985, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

61) On or about 2:20 p.m., January 4, 1985, GILBERTO YURUBI received a quantity of negotiable instruments.

62) On or about 2:45 p.m., January 4, 1985, GILBERTO YURUBI went to the residence of EDGARDO GUTIERREZ.

63) On or about January 26, 1985, EDGARDO GUTIERREZ and CARLOS LAFAURIE had a meeting.

All in violation of Title 18, United States Code, Section 371.

COUNT II

On or about October 4, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Section 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $50,000, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter

within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National and Florida National Banks, and Amerifirst Federal, financial institutions in the Southern District of Florida, and exchange said $50,000 for nine cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said nine cashiers checks and money orders and cause seven money orders to be deposited into Credit Suisse, Zurich, for LAFAURIE and two cashier's checks deposited to Banco Occidente, Republic of Panama, on or about October 11, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT III

On or about October 16, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $53,000, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National and Florida National Banks and, Amerifirst Federal, financial institutions in the Southern District of Florida, and exchange said $53,000 for seven cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive two

of the said cashiers checks and cause the two cashiers checks to be deposited into an account at Banco Occident, Republic of Panama, on or about October 26, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT IV

On or about October 17, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $77,000, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter

within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National and Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida, and exchange said $77,000 for eleven cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive eight of the said eleven cashiers checks and money orders and cause six money orders to be deposited into Credit Suisse, Zurich, for LAFAURIE, and two cashiers checks to be deposited to Banco Occidente, Republic of Panama, on or about October 30, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT V

On or about October 18, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $79,000, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National and Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida, and exchange said $79,000 for twelve cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the

said twelve cashiers checks and money orders and cause eight money orders to be deposited into Credit Suisse, Zurich, for LAFAURIE, and four cashiers checks to be deposited to Banco Occidente, Republic of Panama, on or about October 30, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT VI

On or about October 19, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $117,000, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby

concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National and Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida, and exchange said $117,000 for seventeen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive sixteen of the said seventeen cashiers checks and money orders and cause thirteen money orders to be deposited into Credit Suisse, Zurich, for LAFAURIE, and three cashiers checks to be deposited to Banco Occidente, Republic of Panama, on or about October 30, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT VII

On or about October 20, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $36,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal, a financial institution in the Southern District of Florida and exchange said $36,000.00 for four cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said four cashiers checks and money orders and cause them to be deposited into Credit Suisse, Zurich, for LAFAURIE on or about October 30, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT VIII

On or about October 22, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $88,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to

be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks, Amerifirst Federal and Southeast Bank, financial institutions in the Southern District of Florida and exchange said $88,000.00 for 18 cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said eighteen cashiers checks and money orders and cause them to be deposited to Credit Suisse, Zurich and Banco Occidente for LAFAURIE on or about November 1, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT IX

On or about November 1, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $45,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks and Amerifirst Federal financial institutions in the Southern District of Florida and exchange said $45,000.00 for six cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the

said six cashiers checks and money orders and cause them to be deposited into an account known as Banco Occidente, Republic of Panama on or about November 8, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT X

On or about November 2, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $15,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter

within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Florida National Bank and Amerifirst Federal, financial institutions in the Southern District of Florida and exchange said $15,000.00 for three money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said three cashiers checks and money orders and cause them to be deposited into an account at Banco Occidente, Republic of Panama on or about November 13, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XI

On or about November 15, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick

and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $98,900.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida and exchange said $98,900.00 for twelve cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive ten of the said twelve cashiers checks and money orders and cause them to be deposited into an account known as

Banco Occidente, Republic of Panama, all in violation of Title 18, United States Code, Section 1001.

COUNT XII

On or about November 16, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $50,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida and exchange said $50,000.00 for eight cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive seven of the said eight cashiers checks and/or money orders and cause them to be deposited into Banco Occidente, Republic of Panama on or about November 23, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XIII

On or about November 17, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code,

Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $46,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal, a financial institution in the Southern District of Florida and exchange said $46,000.00, for six money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said six cashiers checks and money orders and cause them to be deposited into Banco Occidente, Republic of Panama on or about November 23, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XIV

On or about November 19, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $15,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and

accumulate said United States currency and, thereafter, go and cause others to go to Florida National Bank and Amerifirst Federal, financial institutions in the Southern District of Florida and exchange said $15,000.00 for eighteen money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive fifteen of the said eighteen money orders and cause them to be deposited into Banco Occidente, Republic of Panama on or about November 26, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XV

On or about November 27, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $140,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks, Amerifirst Federal, Southeast Bank, City National Bank and Citicorp Savings, financial institutions in the Southern District of Florida and exchange said $140,000.00 for twenty-four cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive nineteen the said twenty-four cashiers checks and money orders and cause sixteen money orders and three checks to be deposited into Banco Occidente, Republic of Panama on or about December 5, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XVI

On or about November 28, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $113,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and

accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida and exchange said $113,000.00 for fourteen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive eight cashiers checks and money orders and cause them to be deposited into Banco Occidente, Republic of Panama on or about December 5, 1985, all in violation of Title 18, United States Code, Section 1001.

COUNT XVII

On or about November 29, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $99,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida and exchange said $99,000.00 for sixteen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive thirteen money orders and cause them to be deposited into Banco Occidente, Republic of Panama on or about December 6, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XVIII

On or about November 30, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $139,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship National, Florida National Banks and Amerifirst Federal, financial institutions in the Southern District of Florida and

exchange said $139,000.00 for seventeen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive sixteen money orders and cause them to be deposited into Banco Occidente, Republic of Panama on or about December 6, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XIX

On or about December 1, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $42,600.00, to smaller amounts by the purchase of multiple cashiers

checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal, financial institution in the Southern District of Florida and exchange said $42,600.00 for six money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive six money orders and cause them to be deposited into Banco de Occidente, Republic of Panama on or about December 10, 1984, all in violation of Title 18, United States Code, Section 1001.

COUNT XX

On or about December 3, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $123,100.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Florida National, Amerifirst Federal Savings and Loan, Flagship, City National and Citicorp Savings, financial institutions in the Southern District of Florida and exchange said $123,100.00 for nineteen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO

GUTIERREZ and GILBERTO YURUBI, to receive nine money orders and cause them to be deposited into an account at Banco de Occidente, Republic of Panama, all in violation of Title 18, United States Code, Section 1001.

COUNT XXI

On or about December 4, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $99,900.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter

within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal, Florida National Bank, Flagship and Southeast, financial institutions in the Southern District of Florida and exchange said $99,900.00 for eighteen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said eighteen cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXII

On or about December 6, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be

reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $117,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal, Florida National and Flagship National, financial institutions in the Southern District of Florida and exchange said $117,000 for fifteen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said fifteen cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXIII

On or about December 7, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $77,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and

accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal, Florida National Bank, and Flagship Bank, financial institutions in the Southern District of Florida and exchange said $77,000.00 for eleven cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said eleven cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXIV

On or about December 8, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in

an amount greater than $10,000, to wit, $54,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal Savings and Loan, a financial institution in the Southern District of Florida and exchange said $54,000.00 for six cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said six cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXV

On or about December 10, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $117,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal Savings and Loan, Flagship National, and Florida National Banks, financial institutions in the Southern District of Florida and exchange said $117,000.00 for fifteen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO

GUTIERREZ and GILBERTO YURUBI, to receive the said fifteen cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXVI

On or about December 11, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $122,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service,

that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Florida National Bank, Amerifirst Federal Savings and Loan, Flagship, City National and Citicorp Savings, financial institutions in the Southern District of Florida and exchange said $122,000.00 for twenty-two cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said twenty-two cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXVII

On or about December 12, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal

Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $85,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship, Amerifirst Federal Savings and Loan and Florida National Banks, financial institutions in the Southern District of Florida and exchange said $85,000.00 for eleven cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said eleven cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXVIII

On or about December 17, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $134,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and

accumulate said United States currency and, thereafter, go and cause others to go to Florida National, Southeast Bank, Amerifirst Savings and Loan, Flagship, Citicorp Savings and City National, financial institutions in the Southern District of Florida and exchange said $134,000.00 for twenty-three cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said twenty-three cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXIX

On or about December 18, 1984, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $91,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship Bank, Southeast Bank and Amerifirst Federal Savings and Loan, financial institutions in the Southern District of Florida and exchange said $91,000.00 for fourteen cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said fourteen cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXX

On or about January 3, 1985, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $38,000.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Amerifirst Federal Savings and Loan and Pan American Bank, financial institutions in the Southern District of Florida and

exchange said $38,000.00 for five cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the said five cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

COUNT XXXI

On or about January 4, 1985, in the Southern District of Florida, the defendants,

CARLOS LAFAURIE,
EDGARDO GUTIERREZ
and
GILBERTO YURUBI,

knowingly and willfully did conceal, cover-up and caused to be concealed and covered-up by a scheme, trick and device material facts in a matter within the jurisdiction of the Department of Treasury, Internal Revenue Service, which facts were required to be reported pursuant to Title 31, United States Code, Sections 5313, 5322 and 31 Code of Federal Regulation Sections 103.22 and 103.25.

It was the object of said scheme, trick and device for the defendants to exchange United States currency in an amount greater than $10,000, to wit, $130,390.00, to smaller amounts by the purchase of multiple cashiers checks and/or money orders from various financial institutions thereby causing no Currency Transaction

Reports (IRS Form 4789) concerning said currency to be filed with the Internal Revenue Service; and, thereby concealing and covering up material facts in a matter within the jurisdiction of the Internal Revenue Service, that is, the accurate existence, source, origin, ownership and transfer of the said United States currency.

It was part of said scheme, trick and device that the defendants would and did receive, possess and accumulate said United States currency and, thereafter, go and cause others to go to Flagship, Pan American Bank, Flagler Federal Savings and Loan, Bank of Miami, City National, Barnett Bank, Southeast, Florida National and Amerifirst Federal Savings and Loan, financial institutions in the Southern District of Florida and exchange said $130,390.00 for twenty-four cashiers checks and money orders each in amounts under $10,000.

It was further part of said scheme, trick and device for defendants CARLOS LAFAURIE, EDGARDO GUTIERREZ and GILBERTO YURUBI, to receive the

said twenty-four cashiers checks and money orders, all in violation of Title 18, United States Code, Section 1001.

A TRUE BILL

/s/ Gloria C. Wisdom
FOREPERSON

/s/ Stanley Marcus
STANLEY MARCUS
UNITED STATES ATTORNEY

/s/ Charles S. Saphos
CHARLES S. SAPHOS
ASSISTANT UNITED STATES ATTORNEY

No. 87-1493

In the Supreme Court of the United States

OCTOBER TERM, 1987

CARLOS LAFAURIE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
JOHN C. KEENEY
Acting Assistant Attorney General
MAURY S. EPNER
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the Currency and Foreign Transactions Reporting Act, 31 U.S.C. (& Supp. III) 5311 *et seq.*, and the regulations promulgated thereunder, prohibit structuring currency transactions in order to cause a financial institution to fail to file Currency Transaction Reports.

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CARLOS LAFAURIE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A12) affirming petitioner's conviction is reported at 833 F.2d 1468. The opinion of the district court (Pet. App. C1-C9) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 14, 1987. A petition for rehearing was denied on January 13, 1988 (Pet. App. B1-B2). The petition for a writ of certiorari was filed on March 9, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional plea of guilty in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of conspiring to

cause the concealment of material facts from the Internal Revenue Service, in violation of 18 U.S.C. 371. He was sentenced to a two-year term of imprisonment and a fine of $250,000. The court of appeals affirmed (Pet. App. A1-A12).

1. Under federal law, a financial institution is required to file a Currency Transaction Report (CTR) whenever a customer makes a currency deposit in excess of $10,000. 31 U.S.C. 5313; 31 C.F.R. 103.22(a)(1) (1985).[1] The evidence showed that petitioner paid his co-defendant Gilberto Yorubi to convert large sums of currency to money orders and cashier's checks. In several instances, petitioner arranged for the purchase of more than $10,000 in money

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[1] Section 5313(a) (31 U.S.C.) provides in relevant part:

> When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. * * *

Section 103.22(a)(1) (31 C.F.R.) provides in relevant part:

> Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary * * * and all information called for in the forms shall be furnished * * *.

Each Currency Transaction Report form (Form 4789) contains the following provision:

> Multiple transactions by or for any person which in any one day total more than $10,000 should be treated as a single transaction, if the financial institution is aware of them.

orders or cashier's checks on a single day and at a single bank or at different branches of the same bank. Because no single money order or cashier's check was larger than $10,000, however, none of the banks filed a CTR for any of the transactions. Pet. App. A4-A6.

Petitioner moved to dismiss the indictment before trial, contending that his structured transactions were not unlawful. The district court denied the motion and petitioner thereafter entered a conditional guilty plea, reserving his right to appeal the district court's order. Pet. App. A6.

2. Relying on its prior decisions in *United States* v. *Giancola*, 783 F.2d 1549 (1986), cert. denied, 479 U.S. 1018 (1986), and *United States* v. *Tobon-Builes*, 706 F.2d 1092 (1983), the court of appeals affirmed (Pet. App. A1-A12). The court explained (*id.* at A8) that "[t]he record clearly establishes that some [of petitioner's] purchases in the present case triggered a bank's duty to file a CTR." And the court noted (*ibid.*) that "[a] conspiracy to cause a bank to fail to file CTRs is a conspiracy to defraud the United States in violation of Section 371." The court accordingly upheld the indictment as "sufficient to charge a violation of Section 371" (*ibid.*).

ARGUMENT

1. Petitioner contends (Pet. 7-19) that this Court should review the government's theory that it is illegal to structure currency transactions so as to avoid the currency reporting requirements. The same claim was before the Court in *Perlmutter* v. *United States*, No. 87-1053; *Florez* v. *United States*, No. 87-810; *Giancola* v. *United States*, No. 86-491, and *Heyman* v. *United States*, No. 86-5365, and in all four cases the Court denied certiorari (see *Perlmutter* v. *United States*, No. 87-1053 (Mar. 7, 1988);

Florez v. *United States*, No. 87-810 (Feb. 22, 1988); *Giancola* v. *United States*, 479 U.S. 1018 (1986); *Heyman* v. *United States*, 479 U.S. 989 (1986)). In our briefs in opposition in those cases, we noted that there has been some division among the circuits on this and related issues arising from prosecutions under Section 5313.[2] Congress, however, has recently enacted the Money Laundering Control Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-22, which is included as Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-18. The Money Laundering Control Act was expressly designed to overrule the cases that conflict with the result reached by the court of appeals here. The new law deprives the statutory issue presented in the petition of any continuing significance. Accordingly, petitioner's claim does not warrant further review by this Court.

Under Section 5313 and its accompanying regulations, only financial institutions have a duty to file CTR's in connection with cash transactions. Several courts of appeals have nevertheless recognized that under 18 U.S.C. 2(b) a defendant may still be held criminally liable for causing a financial institution to violate its statutory duties. *United States* v. *Richeson*, 825 F.2d 17 (4th Cir. 1987); *United States* v. *Heyman*, 794 F.2d 788 (2d Cir.), cert. denied, 479 U.S. 989 (1986); *United States* v. *Cook*, 745 F.2d 1311 (10th Cir. 1984), cert. denied, 469 U.S. 1220 (1985); *United States* v. *Puerto*, 730 F.2d 627 (11th Cir.), cert. denied, 469 U.S. 847 (1984); *United States* v. *Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983). See also *United States* v. *Thompson*, 603 F.2d 1200 (5th Cir. 1979). Other courts have taken a contrary view, holding that because

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[2] We have furnished counsel with a copy of our brief in opposition in the *Perlmutter* case, in which we restated the arguments that we had previously made in the *Florez*, *Giancola*, and *Heyman* cases.

31 U.S.C. 5313 and the applicable regulations do not impose on third parties a duty to file CTRs, Section 2(b) cannot be read to impose criminal liability on third parties who, by structuring their transactions, cause a financial institution to fail to file a CTR. See, *e.g.*, *United States* v. *Gimbel*, 830 F.2d 621, 624-625 (7th Cir. 1987); *United States* v. *Larson*, 796 F.2d 244 (8th Cir. 1986); *United States* v. *Varbel*, 780 F.2d 758 (9th Cir. 1986); *United States* v. *Anzalone*, 766 F.2d 676 (1st Cir. 1985).

Whatever the merit of the latter decisions in construing Section 5313, Congress has totally revised the law in this area by enacting the Money Laundering Control Act of 1986 (the Act). The explicit purpose of the new Act was to overrule the decisions in *Anzalone and Varbel* and to codify the decision in *Tobon-Builes*—on which the same court relied in the present case. Section 1354 of the Act, entitled "Structuring Transactions To Evade Reporting Requirements Prohibited," creates a new section of Title 31 (Section 5324), which provides as follows:

> No person shall for the purpose of evading the reporting requirements of Section 5313(a) with respect to such transaction—
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
>
> (2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

By its terms, the statute imposes criminal liability for causing a financial institution to fail to file a CTR as well as for structuring deposits, as petitioner did here, for the purpose of evading the reporting requirements of Section 5313. In formalizing these statutory obligations, Congress made clear that its purpose was to overrule the First and Ninth Circuit decisions in *United States* v. *Anzalone, supra* and *United States* v. *Varbel, supra.* The Senate Committee on the Judiciary, reporting favorably on an identical provision in S. 2683, 99th Cong., 2d Sess. (1986), an earlier version of the money laundering bill, stated (S. Rep. 99-433, 99th Cong., 2d Sess. 21-22 (1986)):

> Under present law, money launderers are successfully prosecuted in some judicial circuits for causing financial institutions not to file reports on multiple currency transactions totaling more than $10,000 or causing financial institutions to file incorrect reports. In such cases, the actual money launderers are charged with violations of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and section 1001 (concealing from the Government a material fact by a trick, scheme, or device). For example, in *United States* v. *Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983), the Eleventh Circuit Court of Appeals upheld a conviction under 18 U.S.C. 1001 where the defendants had engaged in a money laundering scheme in which they had structured a series of currency transactions, each one less than $10,000 but totalling more than $10,000, to evade the reporting requirements. * * * In contrast, the First Circuit Court of Appeals, in *United States* v. *Anzalone*, 766 F.2d 676 (1st Cir. 1985), the Eleventh Circuit Court of Appeals in *United States* v. *Denemark*, 779 F.2d 1559 (11th Cir. 1986), and the Ninth Circuit Court of

> Appeals in *United States* v. *Varbel*, 780 F.2d 758 (9th Cir. 1986) have held that structuring currency transactions to avoid the reporting requirements did not violate 18 U.S.C. section 1001.
>
> Subsection (h) would codify *Tobon-Builes* and like cases and would negate the effect of *Anzalone, Varbel* and *Denemark*. It would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

The House intended precisely the same results when it formulated a virtually identical version of the money laundering provisions. The Committee on Banking, Finance and Urban Affairs stated (H.R. Rep. 99-746, 99th Cong., 2d Sess. 18-19 (1986)):

> In some judicial circuits, money launderers have been successfully prosecuted for causing financial institutions not to file reports on such multiple currency transactions. In such cases, defendants are charged with violations of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and Section 1001 (concealing from the government a material fact by a trick, scheme, or device). [3]

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[3] For this proposition, the House Report cited the Eleventh Circuit's decision in *Tobon-Builes* (H.R. Rep. 99-746, *supra*, at 18 n.1).

> In contrast, other cases have held that the Act and its regulations impose no duty on the customer to inform the financial institution of the structured nature of the transactions, that the reporting duties are placed solely upon the financial institution, and therefore, only a financial institution can directly violate the reporting requirements. [4]
>
> The Committee believes that Section 2 of H.R. 5176 would resolve the legal issues raised by the various circuit courts by expressly subjecting to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, it would create the offense of structuring a transaction to evade the reporting requirements, without regard for whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

In light of this new legislation there is no reason to expect that the previous conflict among the circuits will persist. Accordingly, review by this Court is unwarranted.

2. In any event, the court of appeals' decision is correct under the law as it existed prior to the enactment of the Money Laundering Control Act.

The court below did not address in detail the underlying question whether a third party who causes a bank to breach its reporting obligations may be held liable under Section 5313, having resolved that issue in its earlier decision in *Tobon-Builes*. There, the court of appeals had held that although the duty to file CTRs is imposed only on financial institutions, a third party who causes the institu-

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[4] For this proposition, the House Report cited, *inter alia*, *Anzalone* and *Varbel* (H.R. Rep. 99-746, *supra*, at 19 n.2).

tion to violate its duties may be convicted under 18 U.S.C. 2(b).[5] That holding comports with the broad language of Section 2(b), which extends liability to anyone who "causes an act to be done which if directly performed by him or another would be an offense against the United States." As the reviser's note to 18 U.S.C. 2 states, the aiding and abetting statute

> removes all doubt that one who puts in motion or assists in the illegal enterprise but causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense. [6]

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[5] Correspondingly, a third party who, like petitioner, conspires to cause a bank to violate its reporting obligations may be convicted under 18 U.S.C. 371. See *United States* v. *Sans*, 731 F.2d 1521, 1530-1532 (11th Cir. 1984), cert. denied, 469 U.S. 1111 (1985); *United States* v. *Lester*, 363 F.2d 68, 73-74 (6th Cir. 1966), cert. denied, 385 U.S. 1002 (1967).

[6] The reviser's note also indicates that Section 2 was intended to embrace this Court's decision in *United States* v. *Giles*, 300 U.S. 41, 43 (1937). There, the Court upheld the conviction of a bank teller under a statute that prohibited bank employees from "mak[ing] any false entry in any book * * * of [a] Federal reserve bank or member bank." The defendant was convicted of having caused a bookkeeper for the bank to make false deposit entries in the bank's ledger, by wrongfully withholding from circulation certain deposit slips prepared for particular bank customers. Although the defendant had not himself made the false entries, and although the "innocent bookkeeper was the teller's * * * unconscious agent," the Court held that "the statute [was] broad enough to include deliberate action from which a false entry by an innocent intermediary necessarily follows" (300 U.S. at 48-49). So, too, for Section 2(b): it applies even where the defendant, by his actions, causes an innocent intermediary unwittingly to violate the law. Accord *United States* v. *Ruffin*, 613 F.2d 408, 412-413 (2d Cir. 1979); *United States* v. *Catena*, 500 F.2d 1319, 1322-1323 (3d Cir.), cert. denied, 419

Those principles apply here as well. Although the use of structured deposits may prevent various banks from learning of their duty to file CTR's, a bank customer's success in that endeavor cannot shield him from liability under Section 2(b). Similarly, by agreeing to cause such structured deposits, petitioner was lawfully convicted of conspiracy, in violation of 18 U.S.C. 371.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1988

U.S. 104[illegible] (1974); *United States* v. *Levine*, 457 F.2d 1186, 1188-1189 (10th Cir. 1972); *United States* v. *Lester, supra.*

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